

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION

Ann F. McClurg, individually and
Ann F. McClurg as Personal
Representative of the Estate of
Steven A. McClurg,

Plaintiff,

vs.

Zurich American Insurance Company;
New Prime, Inc.; and Harrell Wayne
Deaton,

Defendants.

Civil Action No. 6:10-711-JMC

ORDER

This matter is before the court on the plaintiff's motion to compel discovery (doc. 29). The motion was referred to this court by the Honorable R. Bryan Harwell, United States District Judge. On August 23, 2010, the case was reassigned to the Honorable J. Michelle Childs, United States District Judge.

In her amended complaint, the plaintiff alleges that in an underlying action she was awarded damages incurred in a motor vehicle collision with defendant Deaton, who is an employee of defendant New Prime, Inc. According to the plaintiff, Deaton was an insured under a policy with defendant Zurich American Insurance Company, and the tractor trailer rig Deaton was operating at the time of the accident was covered under the terms of the policy. The plaintiff seeks a judgment against the defendants declaring that under the terms of the policy Zurich is obligated to indemnify Deaton for the amount of the judgment in the underlying case. She further seeks a judgment that Zurich is obligated to pay the judgment against Deaton pursuant to Zurich's certification to the Department of

Transportation and/or the Federal Motor Carrier Safety Administration and the MCS-90 endorsement to the applicable policy.

On April 12, 2010, defendants Zurich and New Prime moved to administratively close or stay the instant case. According to these defendants, in the underlying action, the plaintiff brought suit only against Deaton and did not notify Zurich or New Prime that they had instituted an action against Deaton. Zurich and New Prime received notice of the underlying action when the plaintiff's attorney provided them with a copy of the default judgment against Deaton in the amount of \$800,000 and a demand for payment. Zurich and New Prime retained counsel for Deaton who then filed a motion for relief from the default judgment, which was denied by the trial court. New Prime filed a motion to intervene, which was granted by the trial court. New Prime and Deaton then appealed, and the South Carolina Court of Appeals affirmed the trial court's denial of the motion for relief from default judgment. The South Carolina Supreme Court accepted certiorari, and at the time of the motion to close or stay the instant case, the appeal was being briefed. The defendants argued in the motion that the declaratory judgment action is not ripe and should be administratively closed or stayed pending the outcome of the appeal in the underlying action.

Prior to the district court ruling on the motion to administratively close or stay, on July 1, 2010, the plaintiff filed a motion to compel discovery, arguing that defendants New Prime and Zurich failed to respond to her discovery requests. On July 16, 2010, the defendants filed their opposition to the motion asking that the court deny the motion and protect them from further discovery until such time as the court ruled on the motion to administratively close or stay the action.

On July 23, 2010, Judge Harwell granted the motion to stay until December 1, 2010, and instructed the parties to file status reports at that time regarding the status of the appeal. The case was reassigned to Judge Childs on August 23, 2010. According to the

latest status report filed by the parties, the South Carolina Supreme Court was to hear the matter in the underlying case on January 5, 2011.

While the stay granted by Judge Harwell expired on December 1, 2010, the purpose for the stay – allowing the parties to obtain a ruling from the South Carolina Supreme Court on the underlying matter – has not yet occurred. Accordingly, the plaintiff's motion to compel discovery (doc. 29) is denied at this time.

IT IS SO ORDERED.

s/Kevin F. McDonald
United States Magistrate Judge

January 20, 2011

Greenville, South Carolina